

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALARMAX DISTRIBUTORS, INC.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 07-0259
)	
RICHARD KERR, et al.,)	
Defendant.)	

MEMORANDUM ORDER

Before the court is plaintiff's motion for sanctions [doc. no. 39]. Plaintiff claims that defendants have engaged in discovery abuses since the start of this case. Plaintiff asks that we award costs and attorneys' fees that it has incurred in preparing for various discovery activities and in filing several discovery motions. Defendants contend that they have acted within the bounds of fair play in discovery, and argue that sanctions are unwarranted under the circumstances. Although we are skeptical of some of defendants' conduct in discovery, we agree that sanctions are not yet warranted in this case.

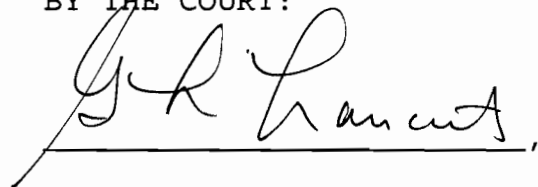
A court may award fees and costs where a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. In re Prudential Ins. Co. Am. Sales Practice Litigation Agent Actions, 278 F.3d 175, 181 (3d Cir. 2002); Chambers v. NASCO, Inc., 510 U.S. 32, 45-46 (1991). We cannot find that defendants acted in bad faith in insisting upon the entry of a protective order before commencing

document production, or in opposing the disclosure of its confidential information to a certain employee of plaintiff. Nor do the overall circumstances indicate bad faith in defendants' supplemental document production.

The belated disclosure of the second telephone directory, and the failure to reproduce the entire directory in the first instance, does give the court pause. While this could have been an innocent copying mistake, it also could have been an attempt to conceal evidence. But, on this record, and at this point in the litigation, we will not charge defendants with vexatious and bad faith conduct. Defendants should be forewarned, however, that their conduct will be viewed closely in the future to ensure compliance with this court's orders, and with their duties to opposing counsel, and this court.

AND NOW, this 30th day of May, 2007, IT IS HEREBY ORDERED that plaintiff's motion for sanctions [doc. no. 39] is DENIED.

BY THE COURT:

 J.

cc: All Counsel of Record